

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses

Congress understands the importance of small business to our country. But the Commission's 2003 Small Business Report will lead many to believe that the FCC does not. In Section 257 of the Telecommunications Act, which contains the mandate to produce this report, Congress told the FCC to start taking small business concerns seriously. Every three years we must identify the market entry barriers faced by small businesses in the communications industry and report on the specific regulations we have prescribed to eliminate those barriers. Despite this Congressional clarity, today's Report does not fulfill our statutory obligation. Instead, I fear that the Report will undermine our credibility with the small business community. To me, that is unacceptable. So I find myself forced to dissent.

Section 257 creates a critical reporting requirement for the Commission. It is critical because small business is the engine that drives America's economy. Small businesses generate two-thirds to three-quarters of new jobs annually in the United States. Almost 98 percent of U.S. telecommunications field employers are small businesses. Much of the future of the telecommunications industry hinges on how well our small to medium-sized businesses do in the national and international economy. This is not only because of the huge number of jobs involved, but also because small business is the source of much of the innovation and energy for the economy in general and for the communications sector in particular, developing 13 to 14 times more patents per employee than larger firms.

Recognizing this, Congress directed the FCC to examine the market entry barriers faced by small businesses and entrepreneurs and then to detail the efforts the FCC has taken to eliminate those market barriers. Congress created this requirement to force the Commission to explain what it was actively doing to promote entrepreneurship and to prevent the Commission from catering to industry giants at the expense of small business.

But today the Commission sends Congress a report that: (1) does not meet the specific requirements of the statute, and (2) for the most part blithely claims that three years of proceedings leading to the removal of competition and consumer protections were really designed to help entrepreneurs all along. American small businesses deserve better than this.

The Report Fails to Meet Section 257's Statutory Requirements

Section 257 states that the Commission must report to Congress every three years on "any regulations prescribed to eliminate barriers within its jurisdiction that are identified by subsection (a) and that can be prescribed consistent with the public interest, convenience and necessity."¹ The "barriers" identified by subsection (a) include "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and services and information services, or in the provision of parts or services to providers of telecommunications services and information services."²

Section 257 thereby clearly requires the Commission to identify market entry barriers faced by small business and to report on new rules that it has promulgated to eliminate those barriers. Instead, we have a slapdash cataloging of miscellaneous Commission actions over the past three years that fails to

¹ 47 U.S.C. § 257(c)(1).

² 47 U.S.C. § 257(a).

comply with the requirements of Section 257. If Congress had wanted the Commission merely to list its proceedings and the general regulations that it had eliminated, it would have said so. In this particular report, the importance of small businesses to the economy and the legacy of small businesses facing market barriers in the communications industry led Congress to ask the Commission to report on proactive steps it had taken to establish new rules to help small business.

So why did the Commission fail to report on new initiatives designed to eliminate market barriers for small businesses, and thereby fail to comply with the statute? It may be because this Commission does not have a small business record to brag about.

We should be more forthright with Congress. We should admit that the Commission has not articulated a plan for how to eliminate market barriers for small business. We should recognize that we have created too few new rules designed specifically to help small businesses. And maybe most importantly, we should realize that some of this Commission's actions – indeed more than a few – have harmed small businesses.

I have supported some of the decisions made by this Commission and opposed others. Although I could give numerous examples raised in this Report, let me highlight just two of the major actions that increase market barriers for small businesses and that I opposed: (1) eliminating media consolidation protections, and (2) undermining broadband competition.

Eliminating Media Consolidation Protections Hurt Small Businesses

On June 2, the Commission voted to weaken its media ownership rules and open the door to more media control by ever fewer corporate giants. In Section 257 Congress expressly commands the Commission to “seek to promote the policies and purposes of this Act favoring diversity of media voices,” but instead the Commission surrendered enormous powers over our news, information and entertainment to a handful of corporations.

In adopting this decision, the Commission failed to analyze how the media consolidation it allowed affects small businesses. The Office of Advocacy of the Small Business Administration strongly urged the Commission to conduct such an analysis prior to rushing ahead with a decision. We failed to do so then, and we fail to do so in this Report.

Across this country, in the many hearings and forums that Commissioner Adelstein and I attended, we heard that weakening media concentration rules threatens the very survival of small businesses. As fewer and fewer companies control our media outlets, small local broadcasters will find it harder and harder to compete. Media analysts expect that the only option for small broadcasters will now be to sell. They conclude that those that want to remain will face an extremely tough road. During our hearings, we heard from small broadcasters that had already been squeezed out of the market, who explained that the Commission's decision will only accelerate this trend. Yet, we failed even to consider the impact of our decision on small broadcasters.

In addition, other small businesses will find it harder to produce and sell programming as national vertically integrated conglomerates control local distribution. We also heard from small businesses that consolidated media markets are more expensive for advertisers, and that this may hurt small businesses' ability to advertise their products and services, particularly if they seek to reach niche communities or minority groups.

Amazingly, the Commission states that only one aspect of its biggest decision of 2003 affects small businesses. The June 2 decision grandfathered any radio ownership clusters that exceed our ownership limits. But it also allows the grandfathered owners to sell the entire cluster to a small business,

which can turn around and re-sell the cluster, after only a few years, to anyone -- even to a media conglomerate. The Small Business Report, like the June 2 decision, claims that this will help small businesses, but fails to analyze such questions as whether this decision will encourage a regulatory shell game that threatens to make a mockery of the radio limits. And it fails to address the harms to small businesses of eliminating media concentration protections and allowing large conglomerates to lock up the available stations in a market.

The June 2 decision further relegated to some indeterminate future Notice of Proposed Rulemaking the critical question of how access to capital in the media industry acts as a barrier to entry for small businesses. This Report again fails to indicate when the Commission will take up this important issue.

Undermining Broadband Competition Hurt Small Businesses

The Report also fails to recognize that many of the FCC's recent telecom competition and broadband decisions will create new barriers to entry for small businesses, and that these decisions have eliminated earlier Commission efforts to break barriers down. More than 26 million access lines are provided by competitive carriers today, many of which are entrepreneurial upstarts. Yet when it comes to "promoting vigorous economic competition," we have failed these new entrants by closing off access to key facilities and raising barriers for entry into the telecommunications service market.

Last year, in the *Triennial Review Order*, the Commission undermined competition in the market for telecommunications services by limiting—on a nationwide basis in all markets for all customers—competitors' access to broadband loop facilities whenever an incumbent deploys a mixed fiber/copper loop. So as incumbents deploy fiber anywhere in their loop plant, they are relieved of the unbundling obligations that Congress imposed to ensure adequate competition in the local market. This can only make it more difficult for small businesses to get into the business of providing telecommunications services. With decisions like this, the Commission constructs barriers to vigorous economic competition by small entities, when it should be eliminating them.

The story is also ominous when it comes to the market for broadband information services. For years, the Commission has had in place policies that make it possible for information services entrepreneurs to access incumbent networks on nondiscriminatory terms. This has made it possible for small businesses like independent ISPs to provide service to customers. But two years ago, in the *Wireline Broadband NPRM*, the Commission suggested that these rules that keep the roads of the Internet open to all are no longer necessary. Should the Commission follow through with this proceeding, it will allow those who own and control networks to set up toll booths on the onramps to the Internet. This will prevent tomorrow's entrepreneurs—who are today tinkering away in garages and laboratories and office cubicles—from getting nondiscriminatory access to the transmission facilities they need to bring their innovations to market. By dismantling these rules, the Commission will raise barriers for small businesses and innovators interested in providing Internet-based information services.

Conclusion

As a final matter, let me just add that, although this Report highlights the entry barriers faced by small businesses that seek to provide telecommunications or information services, this Commission has failed to address the challenges faced by *small businesses as consumers* of telecommunications. As competition falls prey to consolidation and competitive and consumer protections are eliminated, small businesses will see prices rise and choices vanish. Today's small business men and women face limited or no choice for many services, they receive the same kind of confusing and misleading bills that individual consumers receive, and they have nowhere to turn if they are dissatisfied. While this is not the subject of this Report, it needs to be a central focus of Commission attention.